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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,036	07/30/2003	William M. Moscrip	031850/267160	9651
826	7590	08/23/2004	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			ELLINGTON, ALANDRA	
			ART UNIT	PAPER NUMBER
			2855	

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/632,036

Applicant(s)

MOSCRIP, WILLIAM M.

Examiner

Alandra N Ellington

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/19/03</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 and 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Bassani (3,941,169).

- a. With respect to Claim 1, Bassani discloses an apparatus adapted to extrude a sample from a mold for a gyratory compactor, the mold defining an interior portion and opposed open ends, said apparatus comprising: a platform 18 configured to sealingly engage one of the opposed ends of the mold (col. 2 lines 39-40, col. 3 lines 46-49), the platform 18 defining a port 14 extending to the interior portion of the mold when the mold is engaged therewith (col. 2 lines 23-27, 46-64 {Fig. 1}); a piston member 39 configured to be disposed in the interior portion of the mold between the sample 13 and the platform 18 (col. 3 lines 17-22 {Fig. 3B}), the piston member 39 being further configured to be movable with respect to the interior portion of the mold while forming a pressure seal therewith (col. 3 lines 20-27, 53-58 {Fig. 3B}); and a pressure source engaged with the inlet port 14, 29, 31, 42, 43 and configured to exert a pressure through the inlet port 14, 29, 31, 42, 43 and against the piston member 28, 32, 39, 41 so as to extrude the piston member 39 and the sample from the mold through the other of the

opposed ends of the mold (col. 2 lines 67-68, col. 3 lines 1-5, 53-62, col. 4 lines 1-8).

b. With respect to Claim 2, Bassani discloses the apparatus according to Claim 1 wherein the piston member 39 defines a perimeter and the apparatus further comprises an O-ring 46 disposed about the perimeter of the piston member 39, the O-ring 46 being configured to engage a wall 36 defining the interior portion of the mold so as to allow the piston member 39 to form a pressure seal therewith while also allowing the piston member 39 to be movable with respect thereto (col. 3 lines 13-26, 54-58 {Fig. 3B}).

c. With respect to Claim 3, Bassani discloses the apparatus according to Claim 1 further comprising an O-ring 24 operably engaged with the one end of the mold so as to be disposed between the mold and the platform 18 and to form a pressure seal therebetween when the mold is engaged with the platform 18 (col. 2 lines 58-63, col. 3 lines 46-50).

d. With respect to Claim 4, Bassani discloses the apparatus according to Claim 1 further comprising at least one securing device 47 configured to be operably engageable between the platform 18 and the mold so as to secure the mold to the platform 18 as the sample is extruded (col. 2 lines 53-64, col. 3 lines 27-34, col. 4 lines 3-8 {Fig. 2}).

e. With respect to Claim 5, Bassani discloses the apparatus according to Claim 1 wherein the pressure source further comprises an air pump configured to pump air at a selected substantially constant flow rate through the inlet port

14,29,31,42,43 to the interior portion of the mold (col. 2 lines 67-68, col. 3 lines 1-5,55-62, col. 4 line 1 {Fig. 1}).

f. With respect to Claim 13, Bassani discloses a method for extruding a sample from a mold for a gyratory compactor, the mold defining an interior portion and opposed open ends, said method comprising: inserting a piston member 39 into the interior portion of the mold (col. 3 lines 17-22 {Fig. 3B}), the piston member 39 being configured to be movable with respect to the interior portion of the mold while forming a pressure seal therewith (col. 3 lines 20-27,53-58 {Fig. 3B}); sealingly engaging one of the opposed ends of the mold with a platform 18 such that the piston member 39 is disposed between the sample 13 and the platform 18 (col. 3 lines 17-22 {Fig. 3B}), the platform 18 defining an inlet port 14 extending to the interior portion of the mold when the mold is engaged therewith (col. 2 lines 39-40, col. 3 lines 46-49); and exerting a pressure through the inlet port 14,29,31,42,43 and against the piston member 28,32,39,41 with a pressure source operably engaged with the inlet port 14,29,31,42,43 so as to extrude the piston member 28,32,39,41 and the sample from the mold through the other of the opposed ends of the mold (col. 2 lines 67-68m col. 3 lines 1-5, 53-62, col. 4 lines 1-8).

g. With respect to Claim 14, Bassani discloses the method according to Claim 13 further comprising operably engaging an O-ring 46 with the piston member 39 about a perimeter thereof, such that, when the piston member 39 is inserted into the interior portion of the mold, the O-ring 46 engages a wall 36

defining the interior portion of the mold and forms a pressure seal therewith while allowing the piston member 39 to be movable with respect thereto (col. 3 lines 13-26, 54-58 {Fig. 3B}).

h. With respect to Claim 15, Bassani discloses the method according to Claim 13 wherein sealingly engaging one of the opposed ends of the mold with the platform 18 further comprises operably engaging an O-ring 24 between the one end of the mold and the platform 18 so as to form a pressure seal therebetween when the mold is engaged with the platform 18 (col. 2 lines 58-63, col. 3 lines 46-50).

i. With respect to Claim 16, Bassani discloses the method according to Claim 13 further comprising operably engaging at least one securing device 47 between the platform 18 and the mold so as to secure the mold to the platform 18 as the sample is extruded (col. 2 lines 53-64, col. 3 lines 27-34, col. 4 lines 3-8 {Fig. 2}).

j. With respect to Claim 17, Bassani discloses the method according to Claim 13 wherein exerting a pressure through the inlet port 14,29,31,42,43 further comprises pumping air at a selected substantially constant flow rate, with an air pump, through the inlet port 14,29,31,42,43 to the interior portion of the mold (col. 2 lines 67-68, col. 3 lines 1-5, 55-62, col. 4 line 1 {Fig. 1}).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bassani (3,941,169) in view of McAlister et al (5,969,261).

a. With respect to Claims 6 and 18, Bassani discloses the claimed invention except for an air pump configured to have a selected maximum pressure output. However, McAlister et al teaches a gyratory compactor with an air pump 37 configured to have a desired maximum pressure output (col. 5 lines 8-22, 64-67, col. 6 lines 1-3, 65-67, col. 7 line 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Bassani with the teachings of McAlister et al to include an air pump configured to have a selected maximum pressure output for the purpose of providing an automated testing apparatus by controlling pressure within the load bearing surface of the compactor (see McAlister et al, col. 5 lines 8-22, 64-67, col. 6 lines 1-3, 65-67, col. 7 line 1).

5. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAlister et al (5,969,261) in view of Bassani (3,941,169).

a. With respect to Claim 7, McAlister et al discloses a gyratory compactor apparatus having an open-ended cylindrical mold 16 having a wall 28 defining an interior portion, the mold 16 being configured to be operably engageable with the gyratory compactor apparatus 10 and adapted to contain the paving mix sample 18 therein for compaction by the gyratory compactor apparatus 10 (col. 3 lines

Art Unit: 2855

48-51, 59-67, col. 4 lines 1-19), a platform 17,19 configured to sealingly engage one of the open ends of the mold 16, the platform 17,19 defining a port 20 extending to the interior portion of the mold 16 when the mold 16 is engaged therewith (col. 3 lines 59-62, col. 4 lines 10-23), and a piston member 33 configured to be disposed in the interior portion of the mold 16 between the sample 18 and the platform 17,19 (col. 5 lines 5-22).

However, McAlister et al does not specifically teach an apparatus and configured to extrude the compacted paving mix sample from the mold, the extrusion apparatus comprising a piston member being configured to be movable with respect to the interior portion of the mold while forming a pressure seal therewith, and a pressure source operably engaged with the inlet port and configured to exert a pressure through the inlet port and against the piston member so as to extrude the piston member and the sample from the mold through the other of the open ends of the mold.

Bassani teaches an apparatus and configured to extrude the compacted sample from the mold having a piston member 39 being configured to be movable with respect to the interior portion of the mold while forming a pressure seal therewith (col. 3 lines 20-27,53-58 {Fig. 3B}), and a pressure source operably engaged with the inlet port 14,29,31,42,43 and configured to exert a pressure through the inlet port 14,29,31,42,43 and against the piston member 14,29,31,42,43 so as to extrude the piston member 28,32,39,41 and the sample from the mold through



the other of the open ends of the mold (col. 2 lines 67-68, col. 3 lines 1-5, 53-62, col. 4 lines 1-8).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify McAlister et al with the teachings of Bassani to include an apparatus with a piston member being configured to be movable with respect to the interior portion of the mold while forming a pressure seal therewith, and a pressure source operably engaged with the inlet port and configured to exert a pressure through the inlet port and against the piston member so as to extrude the piston member and the sample from the mold through the other of the open ends of the mold for the purpose of injecting sample material into the injection port of the mold cavity and to place the mold in its curing station (see Bassani, col. 3 line 62, col. 4 lines 1-7).

b. With respect to Claim 8, Bassani teaches the piston member 39 defines a perimeter and the apparatus further comprises an O-ring 46 disposed about the perimeter of the piston member 39, the O-ring 46 being configured to engage a wall 36 defining the interior portion of the mold so as to allow the piston member 39 to form a pressure seal therewith while also allowing the piston member 39 to be movable with respect thereto (col. 3 lines 13-26, 54-58 {Fig. 3B}).

c. With respect to Claim 9, Bassani teaches an O-ring 24 operably engaged with the one end of the mold so as to be disposed between the mold and the platform 18 and to form a pressure seal therebetween when the mold is engaged with the platform 18 (col. 2 lines 58-63, col. 3 lines 46-50).

- d. With respect to Claim 10, Bassani teaches at least one securing device 47 configured to be operably engageable between the platform 18 and the mold so as to secure the mold to the platform 18 as the sample is extruded (col. 2 lines 53-64, col. 3 lines 27-34, col. 4 lines 3-8 {Fig. 2}).
- e. With respect to Claim 11, Bassani teaches the pressure source further comprises an air pump configured to pump air at a selected substantially constant flow rate through the inlet port 14,29,31,42,43 to the interior portion of the mold (col. 2 lines 67-68, col. 3 lines 1-5,55-62, col. 4 line 1 {Fig. 1}).
- f. With respect to Claim 12, McAlister et al discloses an air pump 37 configured to have a desired maximum pressure output (col. 5 lines 8-22, 64-67, col. 6 lines 1-3, 65-67, col. 7 line 1).

### ***Conclusion***

- 6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
  - a. Diesel (4,346,609) discloses a fluid sampling device.
  - b. Dunlap et al (3,416,717) discloses a gyratory compactor.
- 7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alandra N Ellington whose telephone number is (571) 272-2178. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.
- 8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (571) 272-2180. The fax phone

Art Unit: 2855

number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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